

**Testimony of Jeanne Shaheen, Governor of New Hampshire  
Before the Senate Committee on Commerce, Science and Transportation  
April 23, 2002**

Thank you, Mr. Chairman. I am Jeanne Shaheen, Governor of the State of New Hampshire. I appreciate this opportunity to appear before you, and I am honored to be on this panel with Federal Trade Commission Chairman Timothy Muris. I want to thank you for devoting so much time to the issue before us today. Few other issues can rival the skyrocketing cost of prescription drugs in terms of its impact on the health of our families, the bottom line of our businesses, and the solvency of state budgets.

Today I am here to testify about how the skyrocketing cost of prescription drugs is making it increasingly difficult for governors to provide high quality Medicaid coverage to children, seniors and people with disabilities without breaking the backs of taxpayers.

In 1996, New Hampshire spent \$41.7 million on prescription drugs as part of our Medicaid program. In fiscal year 2001, New Hampshire spent \$88 million. We cannot afford that type of continued growth in our Medicaid prescription drug costs. Like other governors across the country, I am working to address the high cost of prescription drugs in a number of ways, including a comprehensive pharmacy benefits management program, which, as you might expect, is opposed by the PhRMA.

Governors need your help in this effort. The loopholes in the Hatch-Waxman Act are forcing state governments, seniors, and businesses to spend hundreds of millions of dollars unnecessarily on brand name prescription drugs.

There are 17 drugs that are supposed to go off patent in the next two and a half years. State Medicaid agencies across the country spent more than \$1.2 billion last year on those 17 drugs alone.<sup>1</sup> Under the original intent of the Hatch-Waxman Act, states should expect to save an average of 50 percent on these 17 drugs as lower-cost alternatives become available after

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<sup>1</sup> State Medicaid Survey, Business for Affordable Medicine, January 2002. Every state except for four, Arizona, Kentucky, Michigan, and Rhode Island, participated.

<sup>2</sup> Generic drugs save consumers an estimated 30 to 70 percent. The U.S. Food and Drug Administration, Center for Drug Evaluation and Research, February 21, 1997.

patents expire.<sup>2</sup>

Last year, New Hampshire's Medicaid program spent over \$4.9 million on 15 brand name drugs that face patent expiration between April 2002 and December 2004. If we see timely market competition on those 15 medications, a small state like mine, New Hampshire, could save an estimated \$2.5 million annually in Medicaid prescription drug costs by 2005.

I know that \$2.5 million might not seem like a lot of money to those of you who represent big states. But in New Hampshire \$2.5 million would make a big difference for our taxpayers and the children, seniors and other vulnerable citizens who depend on state services. For example, with \$2.5 million, the state of New Hampshire could provide pre-natal and post birth home visits for 3,437 new babies and their mothers, dental coverage to 8,723 kids, check-ups for 44,642 children, or 59,524 seniors with meals five days a week through Meals on Wheels.

That's why I am part of the Business for Affordable Medicine Coalition. This is a coalition of businesses, labor unions, and governors, both Democrats and Republicans<sup>3</sup> that has come together over the last several months. BAM's principle focus is to prevail upon Congress to close the loopholes in the Hatch-Waxman Act.

Like governors who are trying to identify healthcare cost savings at a time when budgets are extremely tight, businesses that provide health coverage to their workers are anxious to have full access to lower-cost generic alternatives as soon as brand patents expire. Last year the corporate members of BAM alone spent more than \$132 million on the 17 brand name drugs that face patent expiration before 2004.

I am very supportive of intellectual property rights. I support the original purpose of the 1984 Hatch-Waxman Act, which was designed both to promote the growth of a generic drug

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<sup>2</sup> Generic drugs save consumers an estimated 30 to 70 percent. The U.S. Food and Drug Administration, Center for Drug Evaluation and Research, February 21, 1997.

<sup>3</sup> Alabama Governor Don Siegelman, Alaska Governor Tony Knowles, Hawaii Governor Benjamin Cayetano, Louisiana Governor Mike Foster, Missouri Governor Bob Holden, New Hampshire Governor Jeanne Shaheen, South Dakota Governor William Janklow, Vermont Governor Howard Dean, M.D., Washington Governor Gary Locke, West Virginia Governor Bob Wise.

industry and provide additional patent protection for research-based brand-name drugs. However, the Act has been seriously undermined by loopholes that have allowed brand-name drug makers to delay competition from lower-cost alternatives for years.

For example, the patent for Prilosec, which is one of the most popular drugs in America, expired last October. A one-month supply of Prilosec costs a senior \$152 at a drugstore in Henniker, New Hampshire. It's now been seven months since the patent on Prilosec expired, but there's still no generic on the market because, AstraZeneca, the company that makes Prilosec, followed the now all too common strategy of brand-name manufacturers – it sued its generic competitor, triggering an automatic 30-month stay on the FDA's approval of the generic. Meanwhile, AstraZeneca is using its marketing prowess to quickly get Prilosec users to switch over to another drug it makes, Nexium. And my state Medicaid program has spent over \$600,000 on Prilosec since its patent expired.

I know you will hear from PhRMA and the big drug companies that if Hatch-Waxman is reformed, there will be less innovation, less research and development of new drugs. However, according to the Kaiser Family Foundation, brand-name drug companies spent more than twice as much on advertising, marketing and administration as they did on research and development in every year from 1990 through 2000.<sup>4</sup>

Let me be clear that I am not here today as a cheerleader for the generic drug industry. Unfortunately, there is increasing evidence that some generic companies engage in collusion with brand name companies to take advantage of Hatch-Waxman loopholes for their mutual benefit and successfully delay entry of lower-priced generic products.

Brand name drug companies and many generic companies are doing quite well under the current Hatch-Waxman Act. State taxpayers, seniors and businesses are not.

I encourage this Committee and all of Congress to act this year to stop the anti-competitive practices that result from loopholes in the Hatch-Waxman Act.

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<sup>4</sup> *Prescription Drug Trends*, The Henry J. Kaiser Family Foundation, November 2001.